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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Town of Colorado City, an Arizona
municipality,

10 Plaintiff,

11 v.

12 The United Effort Plan Trust, et al.,

13 Defendants.
14

No. CV11-8037-PHX-DGC

ORDER

15 Hildale City, Twin City Water Authority (“TCWA”), and Twin City Power
16 (“TCP”) (collectively “Hildale Intervenor”) move to intervene pursuant to Federal Rule
17 of Civil Procedure 24(a) and Local Rule 7.2(i). Doc. 75. Defendants United Effort Plan
18 Trust, Bruce Wisan and Ronald and Jinjer Cooke (“Opposing Defendants”) oppose the
19 motion to intervene. Doc. 117. For the reasons and with the restrictions that follow, the
20 Court will grant the motion to intervene.

21 **I. Legal Standard.**

22 The Ninth Circuit has established a four-part test for intervention under
23 Rule 24(a). This test requires a proposed intervenor to (1) have a significantly
24 protectable interest in the property or transaction that is the subject of the action, (2) be
25 situated so that the disposition of the action may impair that party’s ability to protect that
26 interest, (3) demonstrate that its interests are not adequately represented by other parties,
27 and (4) move to intervene in a timely manner. *Arakaki v. Cayetano*, 324 F.3d 1078, 1083
28 (9th Cir. 2003). “In determining whether intervention is appropriate, we are guided

1 primarily by practical and equitable considerations. We generally interpret the
2 requirements broadly in favor of intervention.” *Donnelly v. Glickman*, 159 F.3d 405, 409
3 (9th Cir. 1998)

4 **II. Analysis.**

5 **A. Significantly protectable interest.**

6 To demonstrate a significantly protectable interest, the intervenor must establish
7 that (1) its interest is protected under some law and (2) there is a relationship between
8 that legally protected interest and the plaintiff’s claims. *Id.* at 409. Hildale City includes
9 UEP-Trust-owned property that could be substantially impacted by the outcome of this
10 case. TCWA manages and administers the culinary water system in Hildale City and
11 Colorado City. All three intervenors are parties in a related action (Case No. 3:10-cv-
12 08105-JAT). The resolution of the question of Bruce Wisan’s appointment as a special
13 fiduciary for the UEP Trust will affect land ownership in Hildale City and could impact
14 the interests of all three intervenors. The real property and regulatory interests at issue
15 are protected by law.

16 **B. Impaired ability to protect an interest.**

17 Rule 24(a)(2) requires the proposed intervenor to show that the disposition of this
18 action “may as a practical matter impair or impede the movant’s ability to protect its
19 interest[.]” A determination regarding the rightful occupant of the subject property and
20 the constitutionality of Bruce Wisan’s administration of the trust could require Hildale
21 Intervenors to adjust their enforcement, building, utilities, and subdivision policies and
22 permitting procedures. As parties in the related action, Hildale Intervenors also have an
23 interest in avoiding a ruling that could adversely affect their position in that case.

24 **C. Adequate representation by existing parties.**

25 The Court must consider “whether the interest of a present party is such that it will
26 undoubtedly make all intervenor’s arguments,” “whether the present party is capable and
27 willing to make such arguments,” and “whether the intervenor[s] would offer any
28 necessary elements to the proceedings that other parties would neglect.” *State of Cal. v.*

1 *Tahoe Reg'l Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986) (citations omitted). A
2 proposed intervenor need only show that the existing parties' representation of its interest
3 "may" be inadequate, a minimal burden. *Trbovich v. United Mine Workers of Am.*, 404
4 U.S. 428, 538 n.10 (1972).

5 The Court cannot say that Colorado City undoubtedly will make all of Hildale
6 Intervenor's arguments. Colorado City is the town in which the disputed parcel actually
7 lies, but Hildale City is a distinct municipality that is interested in the outcome of this
8 case because much of the property within its boundaries is controlled by the trust.
9 TCWA and TCP will have concerns about the impact of a declaratory judgment on
10 utilities issues that Colorado City may not feel compelled to raise. Hildale Intervenor
11 represent significant interests that may not otherwise be represented in this litigation.

12 **D. Timeliness.**

13 Hildale Intervenor first moved to intervene in August of this year. Due to
14 technical deficiencies in their pleading, the motion was denied two months later.
15 Doc. 85. Hildale Intervenor moved to intervene five weeks after the denial, but their
16 second motion was denied because of concerns about the effect their intervention could
17 have on the schedule of this case. Doc. 105. Hildale Intervenor filed their third motion
18 to intervene on the day their second motion was denied.

19 This process has resulted in an intervention that, if granted, would occur late in the
20 discovery period established by the Court's Case Management Order. Doc. 52. Hildale
21 Intervenor seek to alleviate concerns about their late arrival by avowing in their third
22 motion that "Hildale Intervenor will not seek to conduct their own discovery, and agree
23 to be bound by the existing scheduling order (Doc. 52) so that the case can proceed
24 forward as planned." Doc. 112 at 3. Opposing Defendants express concern that arrival
25 of Hildale Intervenor in this action may require Opposing Defendants to conduct
26 additional discovery in order to respond to claims asserted by Hildale Intervenor.

27 The Court may limit the participation of an intervenor in ongoing litigation. *See*
28 Fed. R. Civ. P. 24 advisory committee note (1966) ("An intervention of right under the

1 amended rule may be subject to appropriate conditions or restrictions responsive among
2 other things to the requirements of efficient conduct of the proceedings.”); *Friends of*
3 *Tims Ford v. Tennessee Valley Authority*, 585 F.3d 955, 963 n. 1 (6th Cir. 2009); *San*
4 *Juan County, Utah v. U.S.*, 503 F.3d 1163, 1189 (10th Cir. 2007). This may include
5 precluding an intervenor from raising new claims or limiting the intervenor’s right to take
6 discovery. *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 373 (1987).

7 The Court will limit any prejudice caused by Hildale Intervenors’ late arrival in
8 this case by imposing the following restrictions on their participation in this case:
9 (1) Hildale Intervenors will be limited to claims already asserted in this case by Colorado
10 City. (2) Hildale Intervenors will be limited to the witnesses, exhibits, and positions
11 stated in the Rule 26(a) disclosure statement attached as Exhibit C to their reply
12 memorandum (Doc. 118-3), which are virtually identical to the same items in Colorado
13 City’s disclosure statement. New witnesses and exhibits may not be identified by Hildale
14 Intervenors. (3) Hildale Intervenors may not initiate discovery in this case, but may ask
15 questions in the Rule 30(b)(6) depositions of the UEP and Utah Attorney General’s
16 Office of no more than 30 minutes in each deposition. (4) Hildale Intervenors may not
17 duplicate briefing and arguments made by Colorado City at the dispositive motion stage.
18 Colorado City and Hildale Intervenors will be required to coordinate briefing to avoid
19 duplication. (5) Hildale Intervenors will work cooperatively with the existing parties to
20 schedule promptly any discovery that may be necessitated by their intervention.

21 The Court concludes that these restrictions will limit any prejudice experienced by
22 Opposing Defendants from the late arrival of Hildale Intervenors.

23 **IT IS ORDERED** that the Third Motion to Intervene (Doc. 111) is **granted** with
24 the restrictions noted above. The Motion to Expedite (Doc. 110) is **denied** as moot.
25 Hildale Intervenors may file their proposed complaint.

26 Dated this 29th day of November, 2012.

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David G. Campbell
United States District Judge